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*Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, NV 89101
(702) 388-6577
(702) 388-6261 (Fax)*

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada State Bar No. 11479
BRENDA WEKSLER
3 Assistant Federal Public Defender
Nevada State Bar No. 8124
4 411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
5 (702) 388-6577/Phone
(702) 388-6261/Fax
6 Brenda_Weksler@fd.org

7 Attorney for Ryan W. Payne

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RYAN W. PAYNE,

15 Defendant.
16

Case No. 2:16-cr-046-GMN-PAL

SEALED EX PARTE APPLICATION
FOR AN ORDER FOR THE
ISSUANCE OF SUBPOENA
PURSUANT TO FEDERAL RULES OF
CRIMINAL PROCEDURE 17(b)

(Expedited Treatment Requested)

17
18 The defendant, Ryan W. Payne, by and through his counsel of record, Rene L.
19 Valladares, Federal Public Defender, and Brenda Weksler, Assistant Federal Public Defender,
20 and files this ex parte application to the Court for the issuance of subpoena for the person named
21 in the attached affidavit of counsel under Federal Rule of Criminal Procedure 17(b).

22 DATED this 13th day of October, 2017.

23 RENE L. VALLADARES
Federal Public Defender

24
25 By: /s/ Brenda Weksler

26 BRENDA WEKSLER
Assistant Federal Public Defender
Attorney for Ryan W. Payne

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

BRENDA WEKSLER, being first duly sworn, deposes and says:

1. The affiant is an Assistant Federal Public Defender in the District of Nevada and in such capacity has been appointed as counsel for the defendant Ryan Payne.

2. The affiant is informed by the defendant, and does on the basis of said information allege, that the defendant is unable to pay the fees and expenses of the witnesses named below, and is further unable to pay the cost of service of subpoenas for the witnesses.

3. It is affiant's professional judgment and opinion that the testimony of this witness is necessary to support defendant's theory at the evidentiary hearing, which is scheduled to commence on October 23, 2017 at 9:00 a.m.

4. The defendant requests the Court issue a subpoena for Department of the Interior employee Kent Kleman, and that the cost of process, fees and expenses of the witness be paid as if the witness had been subpoenaed on behalf of the government.

5. On October 3, 2017, Judge Navarro granted Payne's request for an evidentiary hearing on the matter concerning the shredding of documents at Gold Butte on April 11 and 12 of 2014. (*See* ECF 2608 and pertinent portions of transcript relating to Order). Payne requests a subpoena be issued for BLM Agent Kent Kleman so he can testify at the October 23, 2017 evidentiary hearing.

6. Ms. Suminski has testified she was told to shred documents in relation to the impound operation but did not mention at whose direction. ECF No. 1774, pp. 237-239. Ms. Suminski also testified that she shredded documents herself but at time indicated that "we" did the shredding. ECF No. 1774, pp. 266-267. In addition, Suminski testified law enforcement sensitive information documents and personal identifiable information documents were shredded. Yet based on BLM Agent Kleman's affidavit, there appear to be other categories of

documents involved that were shredded as well. ECF No. 948, pp. 6-7. Mr. Kleman's testimony is needed to explain which other types of documents were destroyed.

7. Federal Rule of Criminal Procedure 17(b) authorizes this application to be made ex parte.

8. The affiant further requests that this application and the order be sealed until further order of this Court.

9. The requested witness is:

Kent Kleman
BLM Office of Law Enforcement and Security
1387 S. Vinnell Way Boise, Idaho 83709



BRENDA WEKSLER, Affiant
Assistant Federal Public Defender

State of Nevada
County of Clark



SUBSCRIBED and SWORN to me this
13th day of October, 2017.



NOTARY PUBLIC in and for said
County and State.

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 RYAN W. PAYNE,

7 Defendant.

Case No. 2:16-cr-046-GMN-PAL

**ORDER FOR THE ISSUANCE OF
SUBPOENAS FOR INDIGENT
DEFENDANT**

8
9 Upon the application of the defendant pursuant to Federal Rule of Criminal Procedure
10 17(b), and good cause appearing therefore:

11 IT IS HEREBY ORDERED that a subpoena be issued for the witness named below and
12 that the cost of process, fees and expenses of the witnesses shall be paid as if subpoenaed on
13 behalf of the government, the Court being satisfied that the presence of the witness being
14 necessary to the presentation of an effective and adequate defense.

15 IT IS FURTHER ORDERED that this witness be provided travel to testify at
16 the evidentiary hearing scheduled to commence on October 23, 2017 at 9:00 a.m. The witness
17 may require one (1) night lodging prior to arrival. Counsel for defendant will notify the U.S.
18 Marshal as soon as possible as to anticipated travel dates.

19 IT IS FURTHER ORDERED that the application and this order are hereby sealed until
20 further order of the Court. The requested witness is:

21 Kent Kleman
22 BLM Office of Law Enforcement and Security
23 1387 S. Vinnell Way Boise, Idaho 83709

24 DATED this ____ day October, 2017.

25
26 UNITED STATES DISTRICT COURT